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✓ ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS FILED	
JUL 20 2010 4:25 PM	
CLERK, U.S. DISTRICT COURT	
By _____	Deputy <u>MCJ</u>

DEVON ENERGY PRODUCTION
COMPANY, L.P.,
PLAINTIFF

VS.

LIBERTY ENERGY, LLC,
DEFENDANT

§
§
§
§ CIVIL ACTION No. _____
§ JURY TRIAL DEMANDED
§
§

§ **3-10CV1431-B**

PLAINTIFF'S ORIGINAL COMPLAINT

42/20

Plaintiff Devon Energy Production, L.P. ("DEPCO") brings this collection action against Defendant Liberty Energy, LLC ("Liberty") and alleges as follows:

PARTIES

1. Plaintiff Devon Energy Production Company, L.P., ("DEPCO") is an Oklahoma Limited Partnership authorized to do business in Texas. Devon's general partner is DVN Operating Company, L.L.C., which has one member, Devon OEI Operating, L.L.C., which in turn has one member, Devon OEI, L.L.C. Devon's limited partner is Devon OEI Operating, L.L.C., which has one member, Devon OEI, L.L.C. Devon OEI, L.L.C. is wholly owned by Devon OEI Holdings, Inc., a corporation organized and existing under the laws of the state of Delaware, with its principal place of business in the state of Oklahoma.

2. Defendant Liberty Energy, LLC. is a limited liability company authorized to do business in Texas. Liberty Energy, LLC is organized under the laws of the state of Massachusetts and its principal place of business is in Boston, Massachusetts.

3. Liberty Energy, LLC may be served with process by serving Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

JURISDICTION AND VENUE

4. There is complete diversity of citizenship between the Plaintiff and Defendant in this matter. The Plaintiff is a citizen of the states of Delaware and Oklahoma, and the Defendant is a citizen of Massachusetts. The amount in dispute between the Plaintiff and the Defendant, exclusive of interest and costs, exceeds the sum of \$75,000.00. Therefore, this Court has jurisdiction over this dispute by virtue of 28 U.S.C. § 1332.

5. The Court has personal jurisdiction over Defendant Liberty because it is authorized to do business in Texas, and regularly conducts business, and has committed acts complained of herein, within the state of Texas and within this judicial district.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a) and (c).

FACTUAL BACKGROUND

7. Plaintiff brings this collection action to recover the unpaid joint interest billing statements ("JIBs") attributable to Liberty's working interest in various wells. DEPCO is an operator of certain oil and gas Wells ("Subject Wells") located in Hill County, Texas, and Johnson County, Texas, as follows:

- a. The J.J. Fehse GU 1H and J.J. Fehse GU 2H Wells, covered by the Operating Agreement dated August 1, 2008, covering 163.66 acres of land, more or less, located in the Mary Crothers Survey, HA-114, Hill County, Texas, and the Mary Crothers Survey, JA-125, Johnson County, Texas;
- b. The Thelma Jean Turner 1H Well, covered by the Operating Agreement dated October 1, 2008, covering 570.811 acres of land, more or less, located in the Richard Hope Survey, A-432, Hill County, Texas; and
- c. The Azlee Watson 7H Well, covered by the Operating Agreement dated November 1, 2008, covering 426.64 acres of land, more or less, located in the James D. Estes Survey, A-254, Hill County, Texas.

Liberty, as a non-operator party of these Subject Wells, has entered into the Joint Operating Agreements listed above in subparagraphs (a) through (c) covering the oil and gas properties which encompass the Subject Wells. The various Joint Operating Agreements govern the relationship between DEPCO and Liberty, including the rights, duties, and obligations of each party. Liberty is obligated under the Joint Operating Agreements to pay its proportionate share of expenses on the Subject Wells upon receiving JIBs from DEPCO. Liberty has breached these Joint Operating Agreements by failing to pay its JIBs to DEPCO when due and through July 1, 2010 continues to refuse payments on those JIBs.

8. In addition to the Subject Wells listed above, DEPCO operates the James Conn IV 1H and James Conn IV 2H Wells (the "Conn Wells") in Johnson County, Texas. Liberty is a non-operating working interest owner in those wells and Liberty is responsible for its share of joint expenses in the Conn Wells to DEPCO. Liberty has been sent valid JIBs for its share of expenses in the Conn Wells, but has failed to make payment to DEPCO. Just as the Subject Wells are, the Conn Wells are also governed by a Joint Operating Agreement originally dated March 1, 2008. Liberty is bound by this Joint Operating Agreement, and the terms and conditions stated therein, as an assignee of an original signatory to the Agreement, as well as by its participation in the Conn Wells.

9. Through July 1, 2010, Liberty has failed to remit payment which is due and owing to DEPCO in an amount exceeding \$ 1,700,000 on the six Wells listed herein. Because operations are on-going, it is expected that these past due sums will continue to increase with time.¹

¹ Because Liberty is in default, revenues attributable to its interest in these Wells has been placed in suspense. As of July 1, 2010, DEPCO has suspended approximately \$174,400 of revenues attributable to Liberty's interest in the Subject Wells and the Conn Wells. The past due amount stated above is not net of the suspended amounts.

10. DEPCO has incurred, and expects to incur in the future, attorneys' fees and costs in connection with Liberty's defaults and DEPCO's collection efforts, efforts which have been ongoing for over a year as of July 1, 2010.

COUNT I
BREACH OF CONTRACT

11. The allegations of paragraphs 1 through 10 are incorporated by reference into this Count I as though fully set forth herein.

12. DEPCO and Liberty are parties to valid and enforceable Joint Operating Agreements as referenced above. DEPCO has complied with and fulfilled all of its duties and obligations as Operator under the Joint Operating Agreements. Liberty, however, has breached each of the Joint Operating Agreements by failing to pay its share of expenses as set forth in the JIBs. Liberty is in direct violation and in material breach of the Joint Operating Agreements. Pursuant to the Joint Operating Agreements, Liberty owes DEPCO payment of all past due amounts, which it seeks to recover on this claim.

13. DEPCO is also entitled to recover from Liberty pre-judgment and post-judgment interest, and its attorneys' fees and costs, under the terms of the Joint Operating Agreements, as well as under TEX. PRAC. & REM. CODE, § 38.001, for such breach of contract.

DEMAND FOR JURY TRIAL

14. DEPCO demands a jury trial.

CONDITIONS PRECEDENT

15. All conditions precedent to DEPCO's claim for relief have been performed or have occurred.

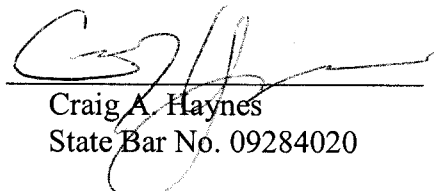
PRAYER

For these reasons, DEPCO asks that the Defendant, Liberty Energy, LLC, be cited to appear and answer and that DEPCO have judgment against Liberty for the following:

- a. The amounts owed by Liberty to DEPCO under the applicable Joint Operating Agreements or otherwise.
- b. Pre-judgment and post-judgment interest.
- c. Costs.
- d. Attorneys' fees.
- e. All other relief to which DEPCO is entitled.

Respectfully submitted,

THOMPSON & KNIGHT LLP

By: 
Craig A. Haynes
State Bar No. 09284020

Rachelle H. Glazer
State Bar No. 09785900

1722 Routh Street, Suite 1500
Dallas, Texas 75201
Phone: 214-969-1700
Fax: 214-969-1751

ATTORNEYS FOR DEFENDANT DEVON
ENERGY PRODUCTION COMPANY, L.P.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Devon Energy Production Company, L.P.

DEFENDANTS

Liberty Energy, LLC

(b) County of Residence of First Listed Plaintiff Oklahoma County
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Thompson & Knight LLP

1722 Routh Street, Suite 1500, Dallas, TX 75201

Phone: 214/969-1700

Attorneys (If Known)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|--------------------------------|--------------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | PTF <input type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §1332

Brief description of cause:

Breach of contract under Joint Operating Agreement between the parties

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

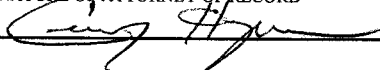
VIII. RELATED CASE(S) (See instructions) PENDING OR CLOSED:

JUDGE

DOCKET NUMBER

DATE 07/20/2010

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE